Supreme Court, U.S.
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No.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

JOHN GUIDO and
JOSEPHINE GUIDO,
individually and doing
business as EAST SIDE
FLOOR AND WALL,

Petitioners,

v.

CITY OF FAIRMONT,

Respondent.

Petition for Writ of Certiorari to the
West Virginia Supreme Court of Appeals

PETITION FOR WRIT OF CERTIORARI

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31 pp

QUESTIONS PRESENTED FOR REVIEW

1. Whether petitioners were denied due process of law afforded by the Fourteenth Amendment of the United States Constitution by the process of including real estate within a municipality by fiat and prescriptive inclusion?

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IN THE

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CITY OF FAIRMONT,

Respondent.

Petition for Writ of Certiorari to the
West Virginia Supreme Court of Appeals

PETITION FOR WRIT OF CERTIORARI

Petitioners John Guido and Josephine Guido, individually and doing business as East Side Floor and Wall, pray that a Writ of Certiorari issue the judgment order of the West Virginia Supreme Court of Appeals, entered on May 21, 1997.

OPINION OF THE COURT BELOW

The judgment order of the West Virginia Supreme Court of Appeals is found in Appendix A to this Petition.

JURISDICTIONAL STATEMENT

The May 21, 1997 order of the West Virginia Supreme Court of Appeals (Appendix A) refused a Petition for Appeal of an Order of the Marion County, West Virginia Circuit Court (Appendix B) entered on February 21, 1996. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

CONSTITUTIONAL PROVISIONS AND STATUTES

Section 1 of the Fourteenth Amendment to the United States Constitution provides in pertinent part:

...nor shall any State deprive any person of life, liberty or property, without due process of law.

STATEMENT OF THE CASE

The questions presented in the instant petition are legal in nature. The following statement provides a concise overview of the factual and procedural background upon which the present issues are predicated.

Plaintiffs' John Guido and Josephine Guido, individually and doing business as East Side Floor and Wall, filed a two count complaint (Appendix E) in the Marion County Circuit Court on July 24, 1991. The first count of the complaint asserted that the plaintiffs' residence and business establishment were not lawfully annexed or incorporated into the City of Fairmont. Plaintiffs sought a declaratory judgment determining that their real estate was not within the municipal corporate limits of the City of Fairmont.

The second count of the complaint alleged that the City of Fairmont had unlawfully in violation of due process of law as guaranteed by the West Virginia and United States Constitutions collected municipal fire service fees and business and occupation taxes from the plaintiffs. A jury trial was demanded on count two of the complaint.

On June 23, 1993, the Court entered an order referring the issues in count one to a Commissioner of the Court. Hearings were held before the Commissioner on June 24, 1994 and December 20, 1994. Proposed Findings of Fact and Conclusions of Law were submitted by the parties subsequent to the evidentiary hearings.

On May 12, 1995, the Commissioner filed Findings of Fact and Conclusions of Law. (Appendix D) Plaintiffs filed Objections to the Findings of Fact and Conclusions of Law on May 31, 1995. The evidence presented to the Commissioner and his findings of fact were relatively undisputed.

Petitioners John and Josephine Guido are the owners of a residence and a business establishment on Dixie Avenue in an area known as Knob Hill. The Guidos purchased the property in 1963, and family members had owned the property since 1920. The Guidos presented evidence that the City of Fairmont had not provided municipal services such as road maintenance, fire protection, sewage, police protection, etc. until the late 1940's and in some instances the 1970's. Petitioners and an aunt who lived next door paved the street in front of their property in 1974.

The territory in question was described in the testimony before the Commissioner as approximately a one square mile area between Freedom Hill on the south and Hoult Road on the north. Petitioner's property on Dixie Avenue is

midway between Freedom Hill and Hoult Road. The Commissioner found that there was no evidence that the area between Freedom Hill and Hoult Road was annexed into the City of Fairmont. The City's boundary signs were simply moved northward from Freedom Hill on two occasions during the 1940's to an area north of Hoult Road. Hoult Road was lawfully annexed in 1947.

The first findings of fact by the Commissioner determined that the area between Freedom Hill and Hoult Road had not been annexed by the City. According to paragraph number 13 of the findings of fact, the Knob Hill section was not included on the municipal charter description when the city was incorporated in the late 1800's.

The evidence presented which would tend to show that the area was lawfully included in the city included:

A. Petitioners' property was on the County Assessor's municipal Land Books and tax maps since 1963. (FOF No. 3);

B. The current charter description of the municipality which was adopted in the 1970's included Dixie Avenue on petitioners' property. (FOF Nos. 11 and 16); and

C. An ordinance adopted by the City in 1915 changing street names included Dixie Avenue. (FOF No. 12).

Petitioners filed objections to the Commissioner's findings contending that the findings of fact were in conflict with the

ultimate conclusion that the petitioners' property was within the city. The Trial Court then directed the Commissioner to file Amended Findings of Fact and Conclusions of Law. (Appendix C)

The Commissioner submitted an amended set of findings at the hearing on the Petitioner's original objections. The amended findings deleted paragraph number 13 which found that the area was not within the original description.

The City Engineer testified before the Commissioner and at an evidentiary hearing before the Court that he had run the boundary metes and bounds calls contained in the City Charter adopted in the 1970's and Dixie Avenue was within the boundaries of the 1970's charter description. The Court adopted the amended findings and determined that Petitioners' property was within the municipal boundaries by an order entered on February 21, 1996.

On July 22, 1996, a Petition for Appeal was filed in the West Virginia Supreme Court of Appeals. The Petition for Appeal was refused by an order of the West Virginia Supreme Court of Appeals entered on May 21, 1997.

REASON FOR GRANTING THE WRIT

Supreme Court Rule 10(c) sets forth, as a reason for granting certiorari, that a state court has decided an important federal question in a way that conflicts with applicable decisions of this Court and the Constitution of the United States.

This Court has long recognized the principle that the legislative bodies of the state and local government have the fundamental power to create, alter, and terminate the geographical boundaries of local governmental

entities. *Hunter v. Pittsburgh*, 207 U.S. 161, 179 (1907). The power of the state is however subject to the restraint which requires that the modification of the boundary conform to the applicable state constitution. *id.*

In this instance, the evidence before the state court clearly establishes that the boundaries of the City of Fairmont were altered to include the petitioners' property within the municipal boundaries by fiat in violation of the West Virginia Constitution, Article VI, § 39(a) and the statutory process mandated by West Virginia Code § 8-2-1 et seq.

The evidence presented by the parties before the Commissioner was relatively undisputed. Petitioners John and Josephine Guido and the Respondent City of Fairmont virtually agree on the facts presented before the Commissioner. The dispute presented to this Court on appeal centers on the Commissioner's deletion of Paragraph No. 13 from the first Findings of Fact and Conclusions of Law and the exclusion of this finding in the Amended Findings of Fact and Conclusions of Law.

The evidence presented in the Circuit Court unquestionably established the Dixie Avenue area where the petitioners' residence and business establishment were located did not fall within the boundaries of the City of Fairmont as a result of (1) the original charter description or (2) by annexation. According to the testimony presented to the Commissioner and the Court, the legal description of the area in question fell within the city boundaries as the result of the current city charter which was adopted by a charter election in the late 1970's.

The Commissioner's initial findings recognized that the area in question was not in the original 1800's charter description and was

not annexed subsequent to the original ~~chartering~~ of the city as evidenced by the following findings:

"13. The area between Freedom Hill and Hoult Road is not contained with the boundary lines of the initial charter of the City of Fairmont or the Town of Palatine.

15. The area between Freedom Hill and Lafayette Street was never the subject of an annexation proceeding."

(Appendix D)

These initial findings were amended to delete finding number 13 in the Amended Findings of Fact and Conclusions of Law filed on August 14, 1995. The amended findings did not negate number 13, the findings were merely silent on the question of whether the area in question was within the original charter description. There was no evidence taken or cited by the Commissioner to alter his initial factual conclusion that the area was not in the original charter description. The deletion of number 13 was simply done to reconcile the ultimate conclusion of law that the petitioners' property "... is within the original corporate boundaries of the City of Fairmont".

The Circuit Court in reviewing the petitioners' objections to both the Commissioner's initial and amended findings went beyond the Commissioner's findings and took testimony from the city engineer. The city engineer admitted that he was unable to determine the location of the original corporate charter boundaries but relied upon the current charter which was adopted in the late 1970's to conclude that Dixie Avenue was within the municipal boundaries.

A proper review of the record would reveal that the only reasonable conclusion to be drawn from the entire body of evidence is that an extension of the city boundaries through various events occurred between the 1940's and late 1970's. The series of events wherein the city moved the boundaries without an annexation ordinance culminated in the city including territory in the new city charter.

The statutory and constitutional process for incorporating territory into municipality is governed by the Home Rule Amendment, Article VI § 39(a) of the West Virginia Constitution, and West Virginia Code § 8-2-1, et seq. *State, ex rel, Alexander v. County Court of Kanawha County*, 147 W.Va. 693, 130 S.E.2d 200 (1947). In *Alexander* it was held that the statutory annexation procedure contained in West Virginia Code § 8-2-2 was the exclusive means of changing a city's boundary and any deviation from the statutory procedure was null and void. *id.* at 203 citing *Tucker v. City of Wheeling*, 128 W.Va. 47, 35 S.E.2d 681 (1945).

In *Alexander*, the Court reiterated the general principle that a municipality must adhere to the legislatively prescribed procedures by stating:

> "Municipalities have no inherent power with regard to the exercise of the functions of their government. Such power depends solely upon grants of power by Acts of the Legislature..." *id.* at 203.

This limitation on municipal powers was considered in Virginia where it was held that "[I]t is, of course, well settled that the creation of municipal corporations and the

fixing of boundaries are legislative functions. [citations omitted]" *Town of Stephens City v. Zea*, 204 Va. 88, 129 S.E.2d 14 (1963). In Zea the taxpayers made a similar claim as in this case that their property was not properly included in the municipality. The Virginia Court held in favor of the municipality by looking first to the 1758 Charter by the Virginia Assembly and finding that original charter controlling. The fact that subsequent surveys or acts of dominion over territories did not supersede the original charter boundaries.

The City has apparently modified the boundaries in this case by simply moving the boundaries and adopting the changes into a new charter. This annexation by fiat circumscribes the annexation procedure prescribed by the legislature.

In absence of a description in the original charter or a lawful annexation of the territory in question, the only possible alternative means for the city to incorporate the petitioners' property into the municipality is under the doctrine of prescriptive inclusion described in 56 *Am Jur 2d* Municipal Corporation § 33 which permits a town to acquire territory by acts of dominion such as providing services and taxing over an extended period of time. In the instance the petitioners presented evidence that municipal services such as fire and police protection and road paving were not available in the area until the 1970's in some instances. The Commissioner and the Circuit Court did not rely on the doctrine of prescriptive inclusion in deciding whether the area was within the municipality other than the Commissioner's finding of fact number 10 which stated:

> "10. Residents and property owners in the area between Freedom Hill and Hoult Road presented unrebutted testimony that essential

> city services such as fire protection, public utilities and police protection were not extended to the area between Freedom Hill and Hoult Road until at least the late 1940's and in some instances the 1970's."

CONCLUSION

For the foregoing reasons the petition for writ of certiorari should be granted.

Respectfully submitted,

BRENT E. BEVERIDGE, Esq.
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208½ Adams Street
P.O. Box 1469
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(304) 363-1907

Attorney for Petitioners

APPENDICES

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APPENDIX A

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 21st day of May, 1997, the following order was made and entered:

John Guido and Josephine Guido,
individually and doing business
as East Side Floor and Wall,
Plaintiffs below, Petitioners

vs.) No. 961704

City of Fairmont, a municipal
corporation, Defendant Below,
Respondent

On a former day, to-wit, July 22, 1996, came the petitioners, John Guido and Josephine Guido, individually and doing business as East Side Floor and Wall, by Brent E. Beveridge, their attorney, and presented to the Court their petition praying for an appeal from a judgment of the Circuit Court of Marion County, rendered on the 21st day of February, 1996, with the record accompanying the petition. Thereafter, on the 31st day of July, 1996, came the respondent, City of Fairmont, a municipal corporation, by James O. Watkins, Jr., its attorney, and presented to the Court its written response in opposition thereto.

Upon consideration whereof, the Court is of opinion and doth hereby refuse said petition for appeal. Chief Justice Workman did not participate.

A True Copy:

Attest: /s/ Connie A. Bowling
Interim Clerk, Supreme Court of Appeals

APPENDIX B

IN THE CIRCUIT COURT OF
MARION COUNTY, WEST VIRGINIA
DIVISION II

JOHN GUIDO and
JOSEPHINE GUIDO,
individually and doing
business as EAST SIDE
FLOOR AND WALL,

Plaintiffs,

vs. / / CIVIL ACTION NO. 91-C-375

CITY OF FAIRMONT, a
municipal corporation,

Defendant.

ORDER ADOPTING AMENDED
COMMISSIONER'S FINDINGS OF FACT AND
CONCLUSIONS OF LAW

On February 13, 1996 came the plaintiffs John Guido and Josephine Guido, individually and doing business as Ease Side Floor and Wall, in person and by Brent E. Beveridge, their attorney and the defendant City of Fairmont by James O. Watkins, Jr., its attorney for a hearing on plaintiffs' objections to Amended Commissioner's Recommended Decision.

Whereupon the Court heard the testimony of the parties and the argument of counsel, and upon consideration of same as well as the record in this case, the Court makes the finding of fact that the property owned by the plaintiffs between Freedom Hill and Hoult Road is within the corporate boundary lines of the City of Fairmont.

It is therefore, accordingly ORDERED follows:

1. That the Amended Commission Findings of Fact and Conclusions of Law d August 14, 1995 are hereby adopted confirmed.

2. That the parties hereto each pay half (1/2) of the following costs within s (60) days

a) Commissioner's fee in the amount of $757.50

b) Court reporters fees in the amount of $581.00

To all of which an objection and excep are reserved to the plaintiffs.

ENTER: 2/21/96

/s/ Rodney B. Merrifie
J U D G E

/s/Brent E. Beveridge
Brent E. Beveridge
Attorney for plaintiffs

/s/James O. Watkins, Jr.
James O. Watkins, Jr.
Attorney for defendant

APPENDIX C

IN THE CIRCUIT COURT OF
MARION COUNTY, WEST VIRGINIA
DIVISION II

JOHN GUIDO and
JOSEPHINE GUIDO,
individually and doing
business as EAST SIDE
FLOOR AND WALL,

Plaintiffs,

vs. / / CIVIL ACTION NO. 91-c-375

CITY OF FAIRMONT, a
municipal corporation,

Defendant.

AMENDED COMMISSIONER'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

FINDINGS OF FACT:

1. Plaintiffs are the owners of a personal residence and a business establishment located at 1800 Dixie Avenue. Plaintiff and his relatives have owned this property since 1920.

2. Plaintiffs' property located at 1800 Dixie Avenue is more particularly bounded and described as follows: being that certain parcel of real estate described as Lot Number One (1) of the Knob Hill Section of the Monongahela Industrial Company's Addition to the City of Fairmont, Winfield District, Marion County, West Virginia, said real estate having been conveyed to them by John Sedera and Betty Marie Sedera, husband and wife by deed dated April 25, 1963, and recorded in the Office of the Clerk of the County Commission of Marion County, West

Virginia, in Deed Book No. 656, Page 188. (Tr. 34; Defendant's Exhibit No. 1)

3. Said parcel of real estate has been assessed for real estate tax purposes upon the land books of Winfield City District, Marion County since 1963. (Tr. 36, 37)

4. The land map maintained by the Marion County Assessor for real estate tax assessment purposes identifies plaintiffs' property on City of Fairmont Map Number 04-06, Parcel 161. (Tr. 85, 86; Defendant's Exhibit No. 2)

5. Plaintiff and his aunt paved Dixie Avenue in 1974.

6. The city limits boundary sign of the City of Fairmont was moved northward on Morgantown Avenue on two occasions between approximately 1940 and 1950.

7. In the 1940's the boundary sign was located a short distance north of the intersection of Vine Street and Morgantown Avenue.

8. In the late 1940's the city boundary sign was moved to the area where Lafayette Street intersects with Morgantown Avenue.

9. In the late 1940's or early 1950's the city limits boundary sign was moved to the area where Morgantown Avenue intersects with Speedway.

10. Residents and property owners in the area between Freedom Hill and Hoult Road presented unrebutted testimony that essential city services such as fire protection, public utilities and police protection were not extended to the area between Freedom Hill and Hoult Road until at least the late 1940's and in some instances the 1970's.

11. The geographical description of the corporate limits of the City of Fairmont contained in the Charter to the City of Fairmont includes plaintiff's property. (Tr. 84, 90; Plaintiffs' Exhibit No. 2)

12. By Ordinance No. 17 passed by the City of Fairmont Board of Affairs on December 6, 1915, for the purpose of renaming certain streets and avenues and providing names for certain unnamed streets with the corporate limits of the City of Fairmont, First and Second Avenues, together in the Knob Hill Addition to the City were combined and named Dixie Avenue. (Tr. 9, 10 - December 20, 1994; Defendant's Exhibit No. 3)

13. The only area between Freedom Hill and the intersection of Morgantown Avenue and Speedway is the Norwood/Hoult Road annexation which took place in 1947.

14. The area between Freedom Hill and Lafayette Street was never the subject of an annexation proceeding.

15. The area between Freedom Hill and Hoult Road and the area where plaintiffs' property is located within the boundaries of the City of Fairmont as described in the current City Charter which was adopted in the 1970's.

CONCLUSIONS OF LAW:

1. The plaintiffs' property, Lot Number One of the Knob Hill Section of the Monongahela Industrial Company's Addition to the City of Fairmont or 1800 Dixie Avenue, is within the original corporate boundaries of the City of Fairmont.

2. Failure to provide services (i.e. road maintenance) and location of signs is not

necessarily evidence of the location of corporate boundaries and property therein. (Tr. 87, 88)

Dated this 14th day of August, 1995.

/s/ Dana R. Shay
DANA R. SHAY
Commissioner

APPENDIX D

IN THE CIRCUIT COURT OF
MARION COUNTY, WEST VIRGINIA
DIVISION II

JOHN GUIDO and
JOSEPHINE GUIDO,
individually and doing
business as EAST SIDE
FLOOR AND WALL,

Plaintiffs,

vs. / / CIVIL ACTION NO. 91-c-375

CITY OF FAIRMONT, a
municipal corporation,

Defendant.

COMMISSIONER'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

FINDINGS OF FACT:

1. Plaintiffs are the owners of a personal residence and a business establishment located at 1800 Dixie Avenue. Plaintiff and his relatives have owned this property since 1920.

2. Plaintiffs' property located at 1800 Dixie Avenue is more particularly bounded and described as follows: being that certain parcel of real estate described as Lot Number One (1) of the Knob Hill Section of the Monongahela Industrial Company's Addition to the City of Fairmont, Winfield District, Marion County, West Virginia, said real estate having been conveyed to them by John Sedera and Betty Marie Sedera, husband and wife by deed dated April 25, 1963, and recorded in the Office of the Clerk of the County Commission of Marion County, West

Virginia, in Deed Book No. 656, Page 188. (Tr. 34; Defendant's Exhibit No. 1)

3. Said parcel of real estate has been assessed for real estate tax purposes upon the land books of Winfield City District, Marion County since 1963. (Tr. 36, 37)

4. The land map maintained by the Marion County Assessor for real estate tax assessment purposes identifies plaintiffs' property on City of Fairmont Map Number 04-06, Parcel 161. (Tr. 85, 86; Defendant's Exhibit No. 2)

5. Plaintiff and his aunt paved Dixie Avenue in 1974.

6. The city limits boundary sign of the City of Fairmont was moved northward on Morgantown Avenue on two occasions between approximately 1940 and 1950.

7. In the 1940's the boundary sign was located a short distance north of the intersection of Vine Street and Morgantown Avenue.

8. In the late 1940's the city boundary sign was moved to the area where Lafayette Street intersects with Morgantown Avenue.

9. In the late 1940's or early 1950's the city limits boundary sign was moved to the area where Morgantown Avenue intersects with Speedway.

10. Residents and property owners in the area between Freedom Hill and Hoult Road presented unrebutted testimony that essential city services such as fire protection, public utilities and police protection were not extended to the area between Freedom Hill and Hoult Road until at least the late 1940's and in some instances the 1970's.

11. The geographical description of the corporate limits of the City of Fairmont contained in the Charter to the City of Fairmont includes plaintiff's property. (Tr. 84, 90; Plaintiffs' Exhibit No. 2)

12. By Ordinance No. 17 passed by the City of Fairmont Board of Affairs on December 6, 1915, for the purpose of renaming certain streets and avenues and providing names for certain unnamed streets with the corporate limits of the City of Fairmont, First and Second Avenues, together in the Knob Hill Addition to the City were combined and named Dixie Avenue. (Tr. 9, 10 - December 20, 1994; Defendant's Exhibit No. 3)

13. The area between Freedom Hill and Hoult Road is not contained with the boundary lines of the initial charter of the City of Fairmont or the Town of Palatine.

14. The only area between Freedom Hill and the intersection of Morgantown Avenue and Speedway is the Norwood/Hoult Road annexation which took place in 1947.

15. The area between Freedom Hill and Lafayette Street was never the subject of an annexation proceeding.

16. The area between Freedom Hill and Hoult Road and the area where plaintiffs' property is located within the boundaries of the City of Fairmont as described in the current City Charter which was adopted in the 1970's.

CONCLUSIONS OF LAW:

1. The plaintiffs' property, Lot Number One of the Knob Hill Section of the Monongahela Industrial Company's Addition to the City of Fairmont or 1800 Dixie Avenue, is within the

original corporate boundaries of the City of Fairmont.

2. Failure to provide services (i.e. road maintenance) and location of signs is not necessarily evidence of the location of corporate boundaries and property therein. (Tr. 87, 88)

Dated this 12th day of May, 1995.

/s/ Dana R. Shay
DANA R. SHAY
Commissioner

APPENDIX E

IN THE CIRCUIT COURT OF
MARION COUNTY, WEST VIRGINIA
DIVISION II

GUIDO and
HINE GUIDO,
idually and doing
ess as EAST SIDE
AND WALL,

Plaintiffs,

/ / CIVIL ACTION NO. 91-C-___

OF FAIRMONT, a
ipal corporation,

Defendant.

C O M P L A I N T

COUNT I

1. Plaintiffs are the owners of a parcel eal estate known as 1800 Dixie Avenue, ont, Marion County, West Virginia.

2. Plaintiffs have owned said parcel of estate since June 8, 1964.

3. A portion of said real estate contains lling occupied as a personal residence by laintiffs and their family.

4. A portion of plaintiff's property is ied as a business office, warehouse and oom from which plaintiffs sell commercial esidential furnishings.

5. Plaintiffs, individually and on behalf eir business, have paid for at least the

past ten years the following fees, taxes and charges to-wit: business and occupation taxes, utility surcharges, fire service charges, business licenses, building permits and real estate taxes in excess of $10,000.00.

6. Defendant has unlawfully charged and collected the aforesaid fees, service charges and taxes from the plaintiff by claiming that the area of Dixie Avenue where plaintiffs' property is located is within the corporate limits of the City of Fairmont.

7. Defendant has never lawfully incorporated or annexed plaintiffs' property and is not entitled to the monies charged and collected.

8. Plaintiffs; have protested the past and present payment of municipal fees, charges and taxes and the defendant has refused to return the monies unlawfully collected and to abate the present collection.

COUNT II

9. Plaintiffs reallege each and every allegation contained in paragraphs 1 through 8 of this Complaint as if fully set forth herein.

10. Plaintiffs have notified the defendant that its actions are illegal and that the monies collected for the municipality are being collected unlawfully.

11. Defendant has intentionally, willfully and maliciously collected the unlawful fees.

12. Defendant's aforesaid unlawful acts violate plaintiffs' civil rights as secured by the West Virginia and United States Constitution.

WHEREFORE, plaintiffs demand judgment against defendant as follows:

A. Compensatory damages for monies unlawfully collected plus interest.

B. A declaratory judgment order determining that plaintiffs' real estate is not within the municipal corporate limits of the City of Fairmont.

C. An injunction against the defendant prohibiting the defendant from collecting all municipal charges from the plaintiffs in the future.

D. Compensatory damages in the sum of $250,000.00.

E. Punitive damages in the sum of $500,000.00.

Plaintiffs demand a trial by jury on Count II of this Complaint.

JOHN GUIDO and
JOSEPHINE GUIDO,
individually and doing
business as EAST SIDE
FLOOR AND WALL,

Plaintiffs by Counsel

/s/ Brent E. Beveridge
BRENT E. BEVERIDGE
Attorney at Law
110 Adams Street
Fairmont, WV 26554

Counsel for Plaintiffs

STATE OF WEST VIRGINIA,
COUNTY OF MARION, TO-WIT:

JOHN GUIDO, a plaintiff named in the foregoing Complaint being first duly sworn, says that the facts and allegations contain therein are true, except insofar as they are therein stated to be upon information, and insofar as they are therein stated to be upon information, he believes them to be true.

/s/ John Guido
JOHN GUIDO

Taken, subscribed and sworn to before me this 17th day of July, 1991.

/s/ Melody A. Hayes
NOTARY PUBLIC

My Commission Expires:
08-30-99